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ABSTRACT

The effect of lawyer credibility and juror perception on trial verdicts was tested through the use of a videotaped, reenacted genuine court case. The reactions of two groups of test subjects composed, first, college students enrolled in speech communication courses and, second, persons who had served on a real jury within four years, provided data which was too inconclusive to resolve the discrepancy between the traditional contention that attorneys have little impact on juries beyond information transmission and the contention that the credibility and prestige of the lawyer is the most significant influence in persuading juries. However, results indicated clearly that, in juries, the same methods of persuasion are used in convincing abstaining jurors to join the consensus and that most juries evidence a marked absence of status problems. Six-man juries, as tested, seemed to be equal to and often superior to twelve-man juries. (CH)

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BEHIND LOCKED DOORS: AN INVESTIGATION OF CERTAIN TRIAL AND JURY VARIABLES BY MEANS OF A VIDEO TAPED TRIAL

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BEHIND LOCKED DOORS: AN INVESTIGATION ON CERTAIN TRIAL AND JURY VARIABLES BY MEANS OF A VIDEO TAPED TRIAL

Brought to England by the Norman conquerors, the jury has been part of Anglo-American legal procedure and tradition for almost a millennium (Erlanger, 1971). While the size and role of the jury did vary somewhat in its early stages of use, we have long since settled down to a jury of twelve of the defendant's peers who are charged with deciding questions of fact, while the judges decide questions of law.

There have been numerous studies and investigations of the competence of the jury (Erlanger, 1971; Kalven and Zeisel, 1966) as well as its efficiency, utility, and approach to the task of fact finding. These studies have been done by lawyers (Kalven and Zeisel, 1966; James, 1951), by sociologists (Simon, 1968; Erlanger, 1970; Strodbeck, 1962) and on a few occasions by psychologists (Hovland, Kelly, and Janis, 1957; Kaplan and Simon, 1972).

At the same time a literature of small group theory and research was being developed by social psychologists such as Cartwright and Zander (1967), and Guetzkow and Collins (1966), as well as by communication researchers such as Cathcart and Samovar (1970), Fest and Harnack (1966), Stattler and Miller (1967), and Barnlund (1968). Although this latter group was working at about the same time as the previously cited group of jury researchers, neither seemed to be familiar with the work of the other, although all are clearly interrelated. Hence, one facet of this study was to examine aspects of small group theory in terms of the

functioning of the civil trial jury. We chose two constructs, group size and training in the process of small-group decision-making for investigation in this area.

Twentieth century legal philosophy and attitudes contain a body of assertions relating to human behavior in the courtroom which have only recently begun to be scrutinized by the empirical methodologies of the social sciences. A case in point is the strongly cherished belief that the attorney in a case has little or no impact on the jury beyond the successful transmission of information about the case being tried. Even Kalven and Zeisel (1966), reached this conclusion, although they admitted that the credibility of witnesses could be a significant factor in jury decision making. On the other hand, empirical research in communication has demonstrated that it is the credibility, or prestige, of the source which frequently becomes the most significant influence in the persuasive process (Hovland and Weiss, 1953; Greenberg and Miller, 1966). Therefore, this study will examine this apparent discrepancy.

In the courtroom the attorney is usually the single most important source of communication, but little attention has been paid to the influence of the attorney on the attitudes and perceptions of the jury in its decision making. An early study by Weld and Danzig (1940) indicated that the prestige of counsel functioned as an intervening variable in the decision making process; however, the data is suspect since the researchers failed to adequately define lawyer credibility. As alluded to above, contrary evidence was posited by Kalven and Zeisel (1966) who found that counsel had very little impact on the outcome of the trial in the opinion of the jurors sometime after the trial. Kaplan (1967) has suggested,

however, that this data ought not to be taken seriously due to the mitigating effects of a limited data base and difficulties with interpretations of questions about counsel.

One major problem with much trial and jury research has been a lack of ecological validity (Anapol and Hurt, 1972). The use of the real courtroom and the real jury is not legal in most states and Kalven and Zeisel (1966) were threatened with a contempt citation and a possible jail sentence when they sought to go behind the locked doors of the jury room. They finally settled for the method of post trial interviews with judge and jury members. Others such as Simon (1968) have made audio tape recordings of a simulated trial, but the most often used method has been a written summary of a trial (Stone, 1965; Hovland, Kelly, and Janis, 1957; Kapland and Simon, 1972). These approaches have departed from ecological validity in important ways; the interaction of the jury decision-making process is lost when the jury does not function as a group and individual decisions are made; important channels of communication are lost when the visual and/or audio aspects of the trial are eliminated; the loss of the courtroom atmosphere brings about a different set and a different attitude toward the task of decision-making.

For these reasons this study is designed to duplicate as closely as possible the real trial situation and thus insure a reasonable measure of ecological validity. The result of this decision has been to impose certain problems or constraints on the study which give it the characteristics of a field study rather than a controlled laboratory experiment. Finally, this is a preliminary report of an ongoing research project, thus, not all the data is in and many questions remain unanswered. Also

for this reason no inferential statistical analyses have been applied to the data to this point and the present report should be considered descriptive rather than predictive.

Method

After consultation with area trial lawyers a decision was made to utilize a civil trial for the following reasons: Rather than a simple guilty-not guilty verdict an infinitely variable decision would be possible if the jury found for the plaintiff and had to decide on a sum of money to award as damages; civil trials receive less publicity and press coverage and the jury would be less likely to have heard about the case chosen; the issues are less likely to be emotional ones and thus the probability of rational decision-making is more likely. The civil trial chosen was recreated on video tape with a running time of about five hours.

In recreating the trial, one of the original lawyers and several of the original witnesses were used. Where replacements were necessary, people with suitable technical backgrounds were used; i.e., a replacement engineer was a professor of engineering, an experienced trial lawyer was used, a local judge served as judge, etc. While the trial was taped in the University of Delaware television studio an authentic court room set was erected and every effort was made to preserve the court atmosphere. Four vidicon cameras were used; they were put in the position of the jury box and all activity was directed to them. Special effects were avoided and all attempts were made to record the trial in a straight-forward way.

The case utilized concerned an iron worker who was injured when the

steel bar joist roofing base he was working collapsed sending him twenty feet to the ground and resulting in severe back and spinal injuries. At the time of the trial, he was still suffering considerable pain and had regained only partial use of his body. A basic issue in the case was the cause of the collapse of the bar joists. The plaintiff argued that the joists were not properly fabricated and welded by the manufacturer and thus the manufacturer was liable under the legal doctrine of product warranty.

The defense maintained that the joists collapsed because they were not properly positioned and spot welded before decking for the roof was placed upon the joists. If this view prevailed, the manufacturer would not be liable for damages. If the jury decided for the plaintiff, it would also have to award damages based on actual out-of-pocket losses, reduction of future earnings because of the accident, and compensation for pain and suffering. All of the exhibits used in the original trial which included photographs of the accident site, samples of the collapsed joists, medical bills, etc. were available for the taping and were given to the jurors to take with them into the jury room. In the actual trial the jury found for the plaintiff and awarded him damages of $485,000, but this information was not revealed to the experimental juries.

Two types of subjects were used. College students who were undergraduates enrolled in Speech Communication courses were utilized in a limited number of juries in order to evaluate the potential of students as jurors in real trials. Most of the other jurors were recruited from the general public and were persons who had served on a real jury within the past four years; several were serving on current juries but had been

excused on a Saturday to participate in this project. All of the jurors were paid $10.00 and provided with lunch as a group in order to avoid any outside "contamination." The jurors were told that they were participating in a study of juries, but given no other information. They filled out various information forms and all of the deliberations were video taped with portable Sony equipment. The trial was divided into five one-hour segments plus a fifteen-minute charge from the judge. Based on the experience of Gunther (1972) with the taping of real trials in Ohio, a five-minute break was given at the end of each one-hour segment. A lunch break of forty-five minutes was given after three segments.

The manipulation of some of the variables was relatively simple to execute. For example, one jury was simply asked to take notes and provided with pencils and traditional yellow legal pads; another was supplied with a mimeographed copy of the instructions of the judge to the jury. Another jury was not shown that segment of the trial containing the summaries of the attorneys. Those juries with training in group discussion were recruited from undergraduate and extension classes in group discussion and were about three-fourths of the way through the course when they participated in the project. We plan to prepare a two-or-three-page hand out on discussion methods and ask a future jury to read that material and attempt to apply it during the deliberations.

In the credibility manipulation situation, the jury was given written materials explaining that since they would not meet the attorneys in the interviewing of the jury (voir dire proceedings), some background was being provided in written form. This material was used to develop credibility and concerned such items as schools attended, i.e., Yale and

Harvard for high prestige, reputation of law firm, experience of attorney, record of winning cases, public service activity of attorney, publication of articles and books on the subject of the trial, etc. Low prestige or credibility was indicated by citing a lack of these items or for example, listing a low prestige local law school for one of the attorneys. As a check on the success in manipulation of credibility, the jurors were asked to select one of the two attorneys they would prefer to engage to represent them in a court action. They were further asked to disregard all considerations of cost or availability.

In order to study juror perception of the attorneys and the other factors in the trial, the jurors were also asked to rank a group of items in order of importance to them in making a decision in the case. They also indicated their degree of certainty on each item. The lawyer choice was made three times, before viewing the trial, after viewing the trial, and after deliberating. The other items were considered only after viewing the trial and after deliberating; this was done to avoid encouraging a pre-trial "set" by the jurors.

While it was necessary to make up juries from those persons available on given trial dates, all variables were assigned by random selection whenever possible. Obviously, the jury trained in group discussion could not be randomly assigned. All juries were balanced in regard to demographic factors in so far as this was possible, and all juries contained both males and females, blacks and whites, and older people and younger people except for the student juries where the age range was 17 to 24.

Results and Discussion

In examining the results, we can look at both the video tapes of the deliberations and the data obtained from the juries. In a later phase of the project, we plan to have skilled outside observers evaluate and analyze the tapes of the deliberations, but I can offer a few tentative observations. First, the students made excellent jurors. They tended to take as much or more time and care with their deliberations as the adult jurors, and their verdicts tended toward the middle ground with the exception of the one student jury that took notes. All of the verdicts are summarized in Table 1.

Second, although the original trial was bifurcated which means that the jury decided on the defendant's liability first and then went back into the court room to hear about the damages--and the video-taped trial was not bifurcated--each jury deliberated in a bifurcated manner. In each instance, the jury first decided liability and then took up the problem of damages. This indicated that formal bifurcation of trials may be unnecessary and that juries are probably better organized than we think they are.

Third, juries seem to have fairly uniform ways of dealing with holdouts. If there is only one holdout, each juror will in turn work on the holdout to convince him to join the rest. If, in a twelve-man jury, there are two or three holdouts, the jury tends to temporarily break up into small groups of three or four persons each. Then, within each small temporary group, two or three persons will attempt to persuade the holdout to join the rest. This procedure tends to work effectively.

Fourth, the jury does pay careful attention to the facts and likes to handle the exhibits and attempts to recreate the events of the trial. Frequent use is made of the blackboard and various individuals contribute bits and pieces to a jury synthesis of the events of the trial. This process is surprisingly logical and rational, but emotional ploys of the attorneys do influence the jury. The most effective and recurring one in this case involved the tactic of the plaintiff attorney in discrediting the defense expert witness by asking him how much he was paid to come and testify. Being under "oath" the expert admitted to being paid $300 per day; subsequently, the jury made much of this point not considering that the plaintiff's experts were probably paid comparable sums.

Fifth, the six-man jury seems to be equal to and often superior to the twelve-man jury so revered by our legal traditions. The six-man jury seems more free from repetition and wasted motion than the larger jury. It seems to work more efficiently and smoothly than the twelve-man jury. In all the juries there is a remarkable absence of status problems and a dutiful concentration on task problems.

In examining Table 1, we can offer some explanation for the results obtained. Training in group discussion did not produce any sharp departure from the normal modal award of $600,000; the unrounded sum decided upon by the twelve-man jury with group discussion training resulted from the setting up of criteria to arrive at a verdict. The juries in this treatment tended to be more cautious and deliberate than the other juries and take more time in making a decision. This may not have been especially necessary in this case but in a closer more even trial, the group discussion background might well contribute to a more just verdict.

Using mimeographed copies of the judge's instructions distributed to the jurors did not greatly affect the outcome of the trial in which we used it, but it appeared to create a more-informed better-functioning jury. The jury made frequent use of the instructions and did not need to struggle to recall the words of the judge. We plan further work with this variable.

Note taking by the jury produced our largest monetary award by a jury and we were concerned for the reasons involved. In reviewing this tape, we found that the jury was able by reference to its notes to reach a decision for the plaintiff in about fifteen minutes. Further, there was an unusual degree of unanimity among the jury members resulting in the last half-hour of jury time being devoted to awarding damages. The jury then decided to award a sum that, after payment of legal fees, would leave sufficient funds to provide an annual return at 6% interest of an amount similar to what the plaintiff had been earning before the accident. We will need more experience with this note-taking variable before we can make any generalizations about its impact.

After noting that many jurors considered the summary of both attorneys too long and not especially important, we decided to experiment with leaving it out. We could find no important effect on outcome or deliberation as a result of omitting the summary. But, we need to consider that most actual trials extend over several days, thus making the summary more significant than it would be in a five-hour trial seen in the course of a single day. Our trial Everett Taylor v. Congaree Iron and Steel Company required four days court time in its original version. Noting further that other juries ranked summary of attorneys fairly low (9 to 11) in

decision-making factors, we are inclined to say that it is not as important a part of the trial as we might have thought it to be.

In the area of credibility, we have interesting and suggestive results which support the findings of the communication researchers and contradict those of lawyers. In every instance, the plaintiff gained the decision of the jury which indicates to us that at least in this case manipulation of credibility could not turn the verdict around, but in a close or even a closer case the possibility exists that the credibility of the attorney could be a significant factor. If we regard the sum awarded as our real measure of outcome, we can observe differences of $100,000 or more when credibility was varied. When we compare the low-plaintiff/low-defense condition to the high-plaintiff/low-defense condition, there is a difference of $227,000, or 45%. While more data is needed, the difference is striking to say the least. We would explain the result on the low-plaintiff/high-defense condition as an effort on the part of the jury to reward the low prestige plaintiff for a victory over the higher prestige defense. In general, since the only difference in the three credibility conditions is lawyer prestige, we consider it reasonable to attribute the dollar differences to the credibility factor. This would indicate that a higher fee paid to a Melvin Beli or an F. Lee Bailey would be a good investment which would result in a higher cash award or, perhaps, a lower sentence depending on the circumstances. We will further develop this point in connection with Table 2.

In Table 2, we have summarized the jurors' perceptions of the factors seen as important in deciding the case being tried. The jurors have ranked the items on the basis of one--being most important to them--and

fourteen--being least important to them. They have also indicated their degree of certainty about each decision. While the relationship is not invariable, the jurors seem more sure about items seen as important than about items seen as less important. Also the general observation can be made that many factors are relatively stable in their rankings by the different juries. Those factors that are ranked relatively low and are stable would include: influence of jury foreman, influence of other jurors, summing up of attorneys, and defense lawyer exhibits. Another group which emerges as high and stable would include: plaintiff lawyer exhibits, plaintiff expert witnesses, plaintiff eyewitnesses, and plaintiff lawyer arguments. But within these items there are interesting fluctuations; the arguments of the plaintiff lawyer--a factor much subject to credibility manipulation--does in fact move directly with prestige suggestion and ranks before deliberations, sixth, with low prestige of plaintiff, first, with high prestige of plaintiff, and third, with low prestige for both lawyers. In each case, the item reverts to fourth after deliberations. This indicates to us a clear effect of credibility manipulation.

The arguments of the defense lawyer also move but not as expected. We would explain the ranking of eighth under high-defense credibility as a result of disappointment with the high-powered defense lawyer, and the rank of sixth under low-defense credibility as a reward for facing up to the high-credibility plaintiff lawyer. Much of the same explanation can be applied to the fluctuations of the rankings of the personalities of the lawyers in the case.

The doctor plays a relatively minor role in the case--merely testifying to substantiate the medical records entered as evidence in the case

and to discuss the treatment and extent of the injuries to the plaintiff. But the doctor is ranked relatively high by two of the three juries in spite of his limited role in the case. We would attribute this to the high prestige accorded to the physician in our society and we suspect that any physician in any case will be accorded a higher rank by the jury than his testimony would warrant.

In general, the case of the plaintiff, the exhibits, expert witnesses, and eyewitnesses appear to be the top three factors to each jury after deliberations, if not always before deliberations. This suggests two things to us, that Kalven and Zeisel (1966) were right in their finding that witness credibility was a key factor in the decision of the jury, and that the process of deliberating did change the jurors' perceptions of the relative importance of the factors upon which the decision was based. We are also forced to conclude that the stress placed upon expert opinion by many, including intercollegiate debaters, is well founded. Lawyers tend to downgrade expert testimony (Kalven and Zeisel, 1966) but the jury does not, at least for the winning side. We alluded earlier to the tactic of the plaintiff attorney in undermining the credibility of the defense expert and this shows up in the relatively low rank assigned the defense expert (10,10, 8,13, 7,7) in comparison with plaintiff's two experts (2,1, 5,3, 1,2). We would explain the two lower ranks (5,3) to the effects of building up the credibility of the plaintiff attorney who then took on some of the esteem previously shown for his experts. If these results prove stable over extended research, it would suggest that credibility will not only affect outcome but also perception of the parts of the communication and that possibly strategy should be developed to

counteract such perceptual fluctuations. At the same time we hasten to add that much more research is needed; it may be that in a criminal case or a tax-law case the outcome would be considerably different.

Table 3 shows the outcome of the attorney selection forms by the individual jurors. While we were able to successfully manipulate attorney selection prior to viewing the trial, in almost every case the jurors chose the plaintiff's attorney after viewing the trial and after deliberation. Because the jurors did sign their forms we were able to discuss their choices with them after the trial and the deliberations.

In the high-defense/low-plaintiff situation, one juror chose the low-prestige plaintiff attorney because she was twenty-three and preferred the younger man even though he was pictured as lacking trial experience. In the later selection in this trial, the lone holdout for the defense lawyer chose him because she preferred a Wilmington, Delaware, lawyer to one from out-of-town (Philadelphia) even though she felt the local man was inferior to the foreigner. In the low-defense/high-plaintiff situation, a middle-aged man chose the defense lawyer because of the local-man reason and stayed with the defense lawyer for two ballots for the same reason.

The low-defense/low-plaintiff condition was designed to test for experimenter bias among other things, thus the seven-five division indicated to us a chance outcome and no presence of experimenter bias. Those selecting the defense lawyer and giving a reason for doing so indicated that they felt that a big steel company would have the resources to engage a top-flight man and were themselves guided by that line of thinking. Those electing the plaintiff attorney indicated that they usually rooted for and sympathized with the underdog and further they regarded the

injured workingman plaintiff as the underdog in the case. The lone dissenter after the trial was sticking to her original decision in spite of the outcome of the trial. We would conclude that prestige suggestion can influence attorney selection before viewing the trial, but afterwards, selection appears to be based on performance in the trial. The deliberation process appears to have little impact on attorney selection.

Conclusion

It is indeed difficult to draw conclusions from an ongoing research project of this degree of complexity in the absence of inferential statistical analysis. We can conclude that this report should be viewed as a field study rather than as a controlled experiment. We do feel that it has demonstrated the feasibility of maintaining ecological validity in a study of trial and jury variables. We further conclude that our data, such as it is, tends to support the findings of communication research in such areas as the role of credibility, group size, and group discussion training. At the same time, certain findings of legal researchers on the role of witness credibility are also supported. While much remains to be done in the study of trial and jury communication and decision-making, we have found our glance behind the heretofore locked doors of the jury room both instructive and illuminating.

TABLE 1

VARIABLES, JURY SIZE, LENGTH OF DELIBERATIONS, AND SUM AWARDED

Variable	Jury Size	Length of Deliberations	Sum Awarded	Make up of Jury
Jury had training in discussion procedures	12	110 minutes	$ 658,000	Adults
Jury had training in discussion procedures	6	60 minutes	$ 600,000	Adults
Jury given written copy of Judge's instructions	6	50 minutes	$ 600,000	Students
Jury took notes during trial	6	45 minutes	$ 850,000	Students
Attorney Summing up of cases omitted	6	50 minutes	$ 600,000	Students
High Credibility Defense Low Credibility Plaintiff	12	45 minutes	$ 600,000	Adults
Low Credibility Defense High Credibility Plaintiff	12	42 minutes	$ 727,000	Adults
Low Credibility for both attorneys	12	25 minutes	$ 500,000	Adults

Note: Students are college undergraduates. Adults are almost all persons who had served on a jury within five years of date of particpation in the study. About 10% of the adult jurors were part-time extension students who had jury experience.

TABLE 2

RANKINGS OF DELIBERATION FACTORS BY JURORS UNDER VARYING CREDIBILITY CONDITIONS

Factor	Condition of Credibility: High Def. Low Pltf.		Low Def. High Pltf.		Def.&Pltf. Low	
	Before Delib.	After	Before	After	Before	After
Personality of Defense Lawyer	11.5 (2.8)	9 (2.4)	7 (2.1)	6 (2.5)	9(2.2)	10(2.3)
Personality of Plaintiff Lawyer	5 (1.6)	6 (1.7)	3.5(2.2)	5 (2.1)	8(1.5)	6(1.9)
Arguments of Defense Lawyer	8 (2.6)	11 (2.5)	6 (2.9)	7.5(3.2)	5(2.3)	9(1.4)
Arguments of Plaintiff Lawyer	6 (1.1)	4 (1.4)	1 (1.5)	4 (1.8)	3(1.5)	4(1.2)
Instructions of the Judge	7 (1.9)	7 (1.5)	12 (1.7)	9.5(2.3)	12(2.5)	11(1.7)
Plaintiff Lawyer Exhibits	1 (1.4)	3 (1.0)	3.5(1.7)	1 (1.8)	4(1.4)	1(1.2)
Defense Lawyer Exhibits	11.5(3.8)	14 (2.4)	9.5(3.7)	12 (2.8)	10.5(2.3)	8(2.0)
Plaintiff's Expert Witnesses	2 (1.2)	1 (1.3)	5 (1.8)	3 (1.7)	1(1.8)	2(1.3)
Defense's Expert Witnesses	10 (2.8)	10 (2.4)	8 (2.8)	13 (3.1)	7(2.3)	7(1.7)
Plaintiff's Eyewitnesses	3 (1.1)	2 (1.0)	2 (1.9)	2 (1.9)	2(1.4)	3(1.3)
Plaintiff's Doctor Testimony	4 (1.4)	5 (1.5)	9.5(1.9)	7.5(1.9)	6(1.5)	5(1.3)
Summing up of Attorneys	9 (1.5)	8 (1.5)	11 (2.0)	11 (2.0)	10.5(2.2)	12(1.5)
Influence of Jury Foreman	- -	12 (1,8)	- -	14 (2.7)	- -	14(1.8)
Influence of other Jurors	- -	13 (1.8)	- -	9.5(2.1)	- -	13(1.9)

Note: The first column in each condition represents the rank of the factor in the collective judgement of the jurors with being the rank for the most important factor, etc. The number in parenthesis represents the degree of certainty of the jurors with (1.0) representing very sure and (5.0) quite unsure.

TABLE 3

ATTORNEY SELECTION BY INDIVIDUAL JURORS UNDER VARYING CREDIBILITY CONDITIONS

Attorney (Defense or Plntf.)	Credibility Condition Utilized	Number of Jurors Selecting Each Attorney Before Viewing the Trial	After Viewing	After Deliberation
Defense Lawyer	High Def.-Low Plntf.	11 (1.6)	1 (2.0)	1 (2.0)
Plaintiff Lawyer	High Def.-Low Plntf.	1 (2.0)	11 (1.5)	11 (2.1)
Defense Lawyer	Low Def.-High Plntf	1 (2.0)	1 (1.0)	1 (3.0)
Plaintiff Lawyer	Low Def.-High Plntf	11 (1.7)	11 (1.4)	11 (1.3)
Defense Lawyer	Low Def.-Low Plntf.	7 (3.5)	1 (3.0)	1 (3.0)
Plaintiff Lawyer	Low Def.-Low Plntf.	5 (2.6)	11 (1.3)	11 (1.3)

Note: The first column in each group represents the number of individual jurors selecting that attorney as the one they would chose to represent them in a court action but with cost ruled out as a consideration. The number in parentheses indicates the degree of certainty of the jurors with (1.0) indicating very sure and (5.0) quite uncertain.